

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

ANTUANE GUEST,)	
)	
Movant,)	
)	
v.)	Case No. CV616-071
)	CR610-004
UNITED STATES OF AMERICA,)	
)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

This Court denied Antwaune Guest’s first 28 U.S.C. § 2255 in 2012. CR610-004, doc. 46 (S.D. Ga. Aug. 27, 2012) (advising that relief be denied because he waived his right to direct and collateral appeal), *adopted*, doc. 48 (S.D. Ga. Sept. 12, 2012). Now he’s back with a second § 2255 motion,¹ doc. 51, this time seeking to exploit the new rule announced in *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551 (2015), made retroactive by *Welch v. United States*, ___ U.S. ___, 136 S.

¹ It is conspicuous that he did not use an available § 2255 form, which demands that all movants disclose prior § 2255 filings. Instead, he used a “home-brewed” version which, unsurprisingly, makes no mention of any prior filings. *See also* doc. 54 (his supplemental brief which he styled as a “Motion To Supplement (Etc.)”, but was not docketed as a motion. The Court has considered this brief, which is a rehash of his latest § 2255 motion.

Ct. 1257 (2016), and otherwise triggering a lot of successive filings. *See, e.g., In re Saint Fleur*, 824 F.3d 1337 (11th Cir. 2016); *In re Hines*, 824 F.3d 1334 (11th Cir. 2016), and *In re Pinder*, 824 F.3d 977 (11th Cir. 2016).

Some of those successive-writ movants have won relief at the appellate level. *See, e.g., In re Moore*, ___ F.3d ___, 2016 WL 4010433 at * 4 (11th Cir. July 27, 2016) (“Accordingly, because Moore has made a prima facie showing of the existence of either of the grounds set forth in 28 U.S.C. § 2255, his application for leave to file a second or successive motion is hereby GRANTED.”); *In re Hubbard*, ___ F.3d ___, 2016 WL 3181417 at * 7 (June 8, 2016) (“Because application of *Johnson* to § 16(b) as incorporated into the Sentencing Guidelines might render the career-offender residual clause that was applicable at the time Hubbard was sentenced unconstitutional, and because the rule in *Johnson* is substantive with respect to its application to the Sentencing Guidelines and therefore applies retroactively, this Court grants Hubbard's request for authorization to file a successive § 2255 motion.”).

That's where Guest needs to go with his latest (June 8, 2016 signature-filed) § 2255 motion.² Doc. 51 at 3-4. And given the time constraints illuminated by the concurrence in *In re Robinson*, 2016 WL 1583616 at * 2 (11th Cir. Apr. 19, 2016) ("As best I can tell, all the prisoners we turned away may only have until June 26, 2016, to refile applications based on Johnson."), the Clerk should be **DIRECTED** to simply transfer his § 2255 motion directly to the Eleventh Circuit.

Finally, the Court **DENIES** Guest's motion to appoint counsel, doc. 55, since the Court lacks jurisdiction over this case.

SO REPORTED AND RECOMMENDED, this 30th day of August, 2016.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

² Guest's claim is moribund because, again, he *waived* his right to collateral appeal. See *Reyes-Sosa v. United States*, 2016 WL 3981360 at * 3 (S.D. Ga. July 5, 2016) (upholding same waiver for otherwise meritless *Johnson* claim).